

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DANIEL D'AMBLY,

Plaintiff,

vs.

CIVIL ACTION NUMBER:

2:20-cv-12880-JMV

CHRISTIAN EXOO a/k/a
ANTIFASH GORDON;
ST. LAWRENCE UNIVERSITY;
TRIBUNE PUBLISHING COMPANY;
NEW YORK DAILY NEWS; VIJAYA
GADDE; TWITTER, INC.; and
COHEN, WEISS AND SIMON, LLP,

Telephone Conference -
Status

Defendants.

Frank R. Lautenberg Post Office and Courthouse
Two Federal Square
Newark, New Jersey 07102
February 4, 2021

B E F O R E:

THE HONORABLE JOHN MICHAEL VAZQUEZ,
UNITED STATES DISTRICT COURT JUDGE

**** ALL PARTIES PRESENT VIA TELEPHONE CONFERENCE ****

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6 appeared on behalf of Defendants Vijaya Gadde and
Twitter, Inc.

1 (PROCEEDINGS held via telephone conference before
2 The HONORABLE JOHN MICHAEL VAZQUEZ, United States
3 District Judge, on February 4, 2021.)

4 THE COURT: Hello, this is Judge Vazquez. We're on
5 the record in the matter of *D'Ambly vs. Exoo*, E-X-O-O, *et al.*
6 The civil number in this case is 20-12880.

7 Can I please have appearances, starting with plaintiff.

8 MR. TRAINOR: Good afternoon, Your Honor. This is
9 Patrick Trainor on behalf of Plaintiff, Daniel D'Ambly.

10 THE COURT: Good afternoon.

11 MR. SCHARLAT: Good afternoon, Your Honor. Richard
12 Scharlat from the law firm of McDermott Will & Emery for
13 Defendants Daily News and Tribune Publishing Company.

14 MR. MULHERIN: Good afternoon, Joe Mulherin, also
15 from McDermott Will & Emery, on behalf of the Daily News and
16 Tribune Publishing.

17 THE COURT: Good afternoon.

18 Is that all counsel?

19 MR. MARLBOROUGH: Good afternoon, Your Honor. This
20 is Chris Marlborough from The Marlborough Law Firm on behalf
21 of Defendant Christian Exoo.

22 THE COURT: Good afternoon.

23 MS. JAMES-WEIR: Good afternoon, Your Honor, Lauren
24 James-Weir from Gibbons P.C. on behalf of Defendant Twitter,
25 Inc., and Vijaya Gadde.

1 MR. HOLTZBLATT: This is Ari Holtzblatt from Wilmer
2 Hale, also on behalf of Defendants Twitter, Inc., and Vijaya
3 Gadde.

4 THE COURT: Good afternoon.

5 MR. TORRES: Good afternoon, this is Richard Torres,
6 Law Office of Richard Torres, for Defendant Exoo. I have not
7 put in my notice of appearance. I was recently admitted into
8 the District of New Jersey. I can do that shortly.

9 THE COURT: Okay. Any other counsel?

10 (No response.)

11 THE COURT: Okay. I really wanted to discuss the
12 Daily News' and Tribune's request for leave to file summary
13 judgment. I do note that, when the original complaint was
14 filed, it was Mr. D'Ambly standing alone as plaintiff; but I
15 also recognize that Mr. Trainer has made a motion to file an
16 amended complaint which includes not only new allegations but
17 also several additional plaintiffs.

18 I did receive the parties' request to file summary
19 judgment. My essential understanding is that the Tribune and
20 Daily News believe that the settlement agreement -- the
21 separation agreement with Mr. D'Ambly controls and that the
22 release that was included within the separation agreement is
23 dispositive of this case.

24 Then I read Mr. Trainor's response -- by the way, that
25 was at Docket Entry 44 from McDermott Will & Emery's

1 submission.

2 Then I saw Mr. Trainor's response at Docket Entry 55
3 where it appears, to me, that the issue being raised is that
4 there was fraud in the inducement to the separation agreement.

5 I'm just trying to understand the complaint as to the
6 Daily News and Tribune, not Mr. Exoo or Twitter or Gadde.

7 Mr. Trainor, as far as Mr. D'Ambly is concerned, you
8 said that he was a member of -- I know that he was a union
9 member who worked at the Daily News and Tribune, but you also
10 said he was a member of the New Jersey European Heritage
11 Association.

12 Is that correct?

13 MR. TRAINOR: That's correct. That's the association
14 he's affiliated with. You know, they describe themselves as
15 a -- sort of a political activist group. They're proud of
16 their European heritage, and that's what they promote.

17 That's unaffiliated with his employment, though,
18 Your Honor. That never came into the workplace. It's a total
19 separate entity. That's what he's affiliated with. None of
20 those activities carried over into the workplace.

21 THE COURT: Okay. I know, but when I was reading the
22 complaint and also the proposed amended complaint and then
23 also the statement of material facts you have, it seems as
24 though his involvement with this association, at least from
25 your views, was an important factor.

1 Paragraph 26 of the original complaint refers to his
2 association with the European Heritage, and what I was trying
3 to understand essentially, Mr. Trainor, was is this an
4 allegation that your client was accused to be a white
5 supremacist but he's not a white supremacist, or he is a white
6 supremacist but they couldn't take any action against him
7 because he's a white supremacist?

8 I didn't understand exactly how this was framed.

9 MR. TRAINOR: Sure. He's been accused of being a
10 white supremacist. That's the gist of it with this European
11 Heritage Association. They call him a white supremacist.

12 In the opinion of the ADL, Anti-Defamation League,
13 it's a white supremacist organization. But he's never done
14 anything that I'm aware of or anybody else has given any
15 indication that he's done anything that would be considered --
16 what I would consider to be a white supremacist.

17 For instance, burning of crosses, you know, desecrating
18 a synagogue or some other sort of organization. I've never
19 known him to have -- no physical attacks on anybody, any
20 non-white people.

21 I have never seen any of that, so it's really hard
22 for me to say, yeah, he is a white supremacist. He's a
23 60-some-odd-year-old man who has never even gotten a speeding
24 ticket so it's very hard for me to say that he is a white
25 supremacist.

1 Even if he were, according to the Daily News' -- last
2 and final warning letter he was issued by the Daily News, he
3 never brought those beliefs or those activities into the
4 workplace and never denigrated any of his coworkers or
5 insulted any of his coworkers.

6 It was all off-work activities, political activities,
7 protesting with signs on, this kind of thing, political
8 protests, First Amendment protection stuff.

9 I don't know what a white supremacist is in this day
10 and age, but he's not done anything that I assign to a white
11 supremacist.

12 THE COURT: You said First Amendment, but this is not
13 a case against the government. The first amendment applies
14 to --

15 MR. TRAINOR: No, it's not.

16 THE COURT: -- or the Fourteenth Amendment to the
17 state.

18 MR. TRAINOR: I'm aware of that, Your Honor. I'm
19 just saying that what he's done as far as protesting stuff,
20 it's all been legal, above-board stuff. He's not done
21 anything violent or criminal or rioting or looting.

22 He's never participated in anything like that. It is
23 just his normal, routine activities. They're not illegal or
24 illicit activities. That's all I was just pointing out with
25 that.

1 THE COURT: Okay. One last question, because I
2 didn't understand. When I read your first complaint -- and I
3 went back and saw the red line changes -- it says that -- let
4 me just see and make sure I have it correct.

5 (Brief pause.)

6 THE COURT: Here it is. It describes his job in
7 paragraph 2. He's a member of the union, the International
8 Brotherhood of Teamsters, and the EHA -- factual allegations,
9 paragraph 14, EHA.

10 Its says: "In addition to being a Teamster, D'Ambly is
11 a member of the New Jersey European Heritage Association, a
12 non-violent, pro-domestic policy organization."

13 That sounds like -- a non-violent, pro-domestic, does
14 he raise money for veterans? Is he helping children? A
15 pro-domestic policy organization? I didn't understand what
16 you meant by that, a pro-domestic policy organization.

17 MR. TRAINOR: That's how they describe themselves.
18 He's against illegal immigration. He wants a border wall
19 along the southern border.

20 He definitely has what you would consider to be
21 conservative or right-wing sort of political viewpoint. So in
22 that sense -- Mr. D'Ambly is a veteran. I don't know if he's
23 actively raising funds for veterans, but I know he is himself
24 a veteran, and I'm sure he does make his contributions when he
25 sees them selling poppies and that kind of thing, but I don't

1 think he's actively raising funds for veterans or other folks.
2 I believe his --

3 THE COURT: No, no. But your description of the
4 European Heritage Association was that they're a non-violent,
5 pro-domestic policy organization. I don't know what that
6 means. What are their tenets?

7 I understand you said he's not a white supremacist. Do
8 they have views on races, on the Jewish religion? What are
9 the tenets of the New Jersey European Heritage Association?

10 MR. TRAINOR: Well, they believe that -- as I said,
11 they believe there needs to be a border -- a wall along the
12 southern border and those type of beliefs.

13 As far as what's considered Jewish elements, from what
14 I've seen that's been assigned to them, it looks to be more
15 maybe conspiracy-theory type stuff than it is hardline
16 anti-Semitic sort of things.

17 A lot of the symbolism I've seen with it are just very
18 old sort of, you know, calling Karl Marx and the Russian
19 revolution -- calling those type of figures Jewish people or
20 they were Jewish communist kind of thing.

21 Really it's more of a very strong anti-communist
22 strain that runs through the belief system, from what my
23 understanding is.

24 THE COURT: If it's anti-communist, what does Judaism
25 have to do with it?

1 MR. TRAINOR: I believe they -- in their opinion
2 that people like Karl Marx and others were also Jewish but
3 communist, Marxist, and the same thing. I believe their
4 opinion -- I'm putting words in their mouth right now, but my
5 opinion is they believe that the Jewish identity fed into
6 their communism.

7 That's me sort of filling in the blanks, from what my
8 understanding is, but I think it's a pretty accurate
9 description.

10 THE COURT: So they're anti-Semitic, basically. They
11 believe in these old Jewish global conspiracy theories.

12 MR. TRAINOR: I don't --

13 THE COURT: I thought Europe had -- obviously before
14 the Holocaust got stronger, but after the Holocaust it seems
15 like the New Jersey European Heritage Association, there's a
16 lot of Jews who trace their heritage back to Europe.

17 MR. TRAINOR: I agree, Your Honor. I believe -- from
18 what I understand -- again, I'm filling in some of the blanks
19 here, so their belief system --

20 THE COURT: Mr. Trainor, why are you filling in the
21 blanks? This is your client. You filed a complaint on his
22 behalf. Why don't you have answers to these questions?

23 You plead the New Jersey European Heritage Association.
24 Why don't you know the organization that you put in your
25 complaint that your client is a member of?

1 Why can't you give me hard facts as to what they
2 believe in and what they do? I'm not asking --

3 MR. TRAINOR: Because I don't believe --

4 THE COURT: Because what?

5 MR. TRAINOR: I'm sorry, Your Honor. I don't . . .

6 THE COURT: You don't what?

7 MR. TRAINOR: I don't believe that his affiliation
8 with New Jersey European Heritage Association has any bearing
9 on his ability to perform his job when he wasn't bringing
10 those activities into the workplace.

11 I don't think that has anything -- my opinion, it
12 doesn't have anything to do with whether or not he performed
13 his job well and certainly has nothing to do with the
14 misrepresentations by the Daily News on when they found
15 certain things and when they got threatening calls.

16 In my opinion, it has no bearing on the case. Okay,
17 he's part of that. As I say, he's never committed any crimes,
18 never harmed anybody else --

19 THE COURT: Wait, Mr. Trainor. Who drafted your
20 complaint?

21 MR. TRAINOR: I did, Your Honor.

22 THE COURT: Then why did you put it in your complaint
23 if it has no bearing on these issues?

24 MR. TRAINOR: Because it was mentioned in the last
25 and final warning letter to Mr. D'Ambly as well as his

1 termination of employment letter, so I put that in there to
2 comment that, yeah, he is part of that organization.

3 But if you look at the last and final warning that
4 was issued by the Daily News, they acknowledged that those
5 activities with the New Jersey European Heritage Association
6 never carried over into the workplace. They agree to that.

7 I just put that there just to be, you know, upfront
8 about everything.

9 THE COURT: Okay. I was trying to understand this
10 theory, what's going on. I understand what you're saying
11 about Exoo.

12 Exoo, in your view, doxes people, D-O-X-E-S, he
13 believes to be are white supremacist or fascist, which you
14 think what he's doing is against the law. And then I see in
15 your second one you have a RICO conspiracy against him. We'll
16 deal with that in due course.

17 Doesn't Mr. Exoo also have a First Amendment right if
18 your client has a First Amendment right to engage in this
19 activity?

20 MR. TRAINOR: Of course, but my client has never
21 directed hundreds if not thousands of other people to make
22 threatening phone calls to Mr. Exoo's employer to get him
23 terminated.

24 My client has not directed hundreds and likely
25 thousands of people to go to Mr. Exoo's home to slash his

1 tires and scratch up his car when it's parked outside of his
2 house. My client has never done that.

3 My client has not directed his speech at other people
4 in an assaultive manner as Mr. Exoo has. Mr. D'Ambly was
5 physically attacked at his home.

6 THE COURT: Oh. I saw that his car was attacked.
7 How was he physically attacked?

8 MR. TRAINOR: I'm sorry. His property was attacked
9 outside of his home by somebody who --

10 THE COURT: Okay. So you're not saying, then, that
11 Mr. Exoo was -- didn't have a First Amendment right. You're
12 just saying if you do it too many times it becomes -- you said
13 it was thousands of times or hundreds of times and then it
14 becomes a problem as opposed to if he just protests once or
15 twice, then it's okay?

16 MR. TRAINOR: I would think so. When does it become
17 harassment? One call is probably not harassment, but 500 in
18 like a 2-hour period or a thousand or 2,000. One client got
19 11,000 calls over like a 16-hour period.

20 Many of those calls are threatening. "Any blood
21 spilled is your responsibility," as one of the threatening
22 calls that was made to the Daily News.

23 So, yeah, that clearly crosses the line of what's
24 protected if you're threatening somebody. That isn't
25 protected speech. That is exactly what's happening here.

1 D'Ambly is also a member of a labor union. You can't
2 just call his labor union to terminate him. For what reason?
3 There's no crime. He hasn't attacked anybody.

4 He went to a rally in Princeton, New Jersey, with tape
5 on his mouth that said something to the effect of -- with tape
6 that we were being silenced. It was a silent political
7 protest. There were six people that participated in it.

8 Next thing you know, there's --

9 THE COURT: I thought you said he made intemperate
10 political remarks, is what I thought I read. I don't know
11 about the tape over the mouth.

12 MR. TRAINOR: Well, he protests quite often. There's
13 more than one time he's protesting. The one time --

14 THE COURT: Now that he's done it more than once, has
15 he now crossed the line into improper activity, using your
16 example?

17 MR. TRAINOR: He wasn't directing it at anybody. His
18 was just political protest in the public forum. It wasn't
19 directed at anybody.

20 THE COURT: What were his intemperate political
21 comments?

22 MR. TRAINOR: He was holding onto a sign talking with
23 another person he was participating with and he was on video
24 recording describing a third person who was not involved in
25 the conversation -- describing that third person as a kike,

1 and that was recorded on video and it was posted to some -- to
2 a YouTube channel that has been credited to him but he has no
3 affiliation with at all. He was just videotaped and put on
4 that YouTube channel.

5 THE COURT: So he used an anti-Semitic slur. Okay.

6 I'm just trying to get my arms around what the thrust
7 of this case is. I understand that your client -- and it
8 seems like in the amended complaint a lot of your client's --
9 there's different organizations.

10 I saw the Proud Boys, I saw other organizations where
11 they do protests, and then it seems as though -- I'm just
12 trying to understand the theory of the case.

13 They protest and they say things that they believe in,
14 which is politically -- I'm not talking about action. Protest
15 action is fine. I'm not talking about violence. But they say
16 things that are politically protected speech, and then
17 Mr. Exoo, you're saying, sees them doing these things and then
18 notifies people, Hey, these folks are engaging in this
19 behavior and encourages people to disassociate with them,
20 essentially.

21 It seems like we're having a political discourse back
22 and forth. Your client has a right to say his beliefs,
23 Mr. Exoo has the right to say his beliefs.

24 You know, taken to a grand level, these anti-Semitic
25 global conspiracy, I would disagree that it's not directed at

1 anybody. It's directed at a whole ethnic group or religious
2 group of people that you want to take action against.

3 It seems as though your client is advocating action
4 against a certain group of people he disagrees with and
5 Mr. Exoo is advocating action against a certain group of
6 people he disagrees with. They just come at from very
7 different ideology, whether it be the far right versus the far
8 left.

9 So, for instance, if your client called him an Antifa,
10 you say he says he's a self-professed Antifa, but if he says
11 that he's Antifa and he was working and his employer fired him
12 because your client said, Hey, he's Antifa, you're saying that
13 he would then have a cause of action against your client
14 because they were protected in that speech?

15 I'm just trying to understand this entire case because
16 it seems as though one group is participating in political
17 speech that the other group doesn't like, the other group
18 takes action which the other group doesn't like, but it seems
19 as though we keep coming back to people espousing their views,
20 whether they be far right or far left. The content is not as
21 relevant to me as what we're saying is happening here.

22 MR. TRAINOR: Okay. I'll address that.

23 Mr. Exoo has an extremely large Twitter following, over
24 50,000 people. What he says is --

25 THE COURT: So certain people like his message or at

1 least follow his message. Maybe a lot of people disagree with
2 him, but they follow him. Okay. So he has a large Twitter
3 following.

4 MR. TRAINOR: Correct. So Mr. D'Ambly didn't know
5 Mr. Exoo from a hole in the wall. They had never had any
6 prior interactions, they don't know one another.

7 Mr. D'Ambly, when he participated in his events, he
8 does so anonymously or under a pseudonym, so he was an unknown
9 person.

10 Mr. Exoo, with his associates -- and there are several
11 people, primary people, that have recently been in the news
12 explaining how they do this process. They discovered
13 Mr. D'Ambly's real identity. His name is Dan D'Ambly.

14 Mr. Exoo then directs his followers to contact
15 D'Ambly's employer, the Daily News, as well as his labor union
16 demanding that he get terminated.

17 Now, when he did this on October 29th, 2018, almost
18 immediately there were up to 100 direct Twitter messages to
19 the Daily News and Teamster's Twitter account saying, Fire
20 this guy, he's a known Nazi, he's bringing hate and harm to
21 our communities.

22 And then that continued for weeks, you know, dozens,
23 maybe hundreds of calls and messages, a variety of
24 communications.

25 Mr. Exoo then starts giving out additional phone

1 numbers. The initial dox gives out just the Twitter, maybe a
2 generic customer service number. Then he says call this
3 number and tell them to get rid of him. Then call this third
4 number and tell them to get rid of Dan D'Ambly. Oh, and by
5 the way, Dan D'Ambly is also the chairman of the union's
6 referendum board. Here's the people that are on that
7 referendum board. Call all of these people and demand that
8 they terminate Dan D'Ambly.

9 So what seems like they're both expressing political
10 speech is completely not the case. Mr. D'Ambly goes to a
11 rally in Princeton, New Jersey. They go there, they have the
12 rally, they go home.

13 Mr. Exoo sees what he's doing, finds out all the people
14 that were participating with Mr. D'Ambly or just Mr. D'Ambly
15 and then directs his followers to make threatening calls,
16 e-mails, Twitter messages, phone calls by the hundreds and
17 oftentimes by the thousands to this person's employer and/or
18 his school -- if it's a college student or something like
19 that, to his school and demand that he gets fired or
20 terminated. Many of those calls at Mr. Exoo's direction are
21 threatening.

22 For instance, Any violence that befalls your workplace
23 is on your hands because you haven't terminated Mr. D'Ambly.

24 That's not even close to 6, 8, 10, 15 people going to a
25 really in downtown Princeton versus somebody behind the scenes

1 that you've never met, don't know who he is, all the sudden
2 you have thousands of people or hundreds of people calling
3 your employer demanding you get fired.

4 Some of those threats are coming out your way, and then
5 your car gets the tires slashed and all scratched up while
6 it's parked in your parking lot. And then on top of that,
7 whoever did it then sends a text message to your private
8 cell phone saying, Ha-ha, is your car in good shape?

9 Then you find out that that very same person was one of
10 the people that called the Daily News with a death threat or
11 with a threatening call against you.

12 They're not even close to what D'Ambly does and what
13 MR. Exoo does. They're not even in the same sphere.

14 THE COURT: So why don't you go after the person who
15 slashed the tires and made the call with the threats?

16 I'm still trying to figure this out. I'm not
17 disagreeing that once you cross the line into criminal action,
18 as what we're seeing in the Capitol riot prosecution, it's no
19 longer protected speech. But you're saying there's a person
20 who slashed the tires and then also made what you interpret to
21 be threats. Why don't you sue that person?

22 MR. TRAINOR: That person is an anonymous person on
23 Twitter with an anonymous username. When I followed up with
24 the South Brunswick Police Department, I was informed early on
25 that our local FBI was involved because of the interstate

1 communications, but they don't return my calls. They don't
2 get back to you when you try to follow up on this stuff. I
3 have the phone number --

4 THE COURT: Listen, there's a big difference between
5 speech and action. By "action," I don't mean physically
6 protesting, peacefully protesting. That's action, obviously,
7 but it's protected.

8 But I understand what you're saying about damage to his
9 car and what you perceive to be threats. But that -- okay.
10 We'll deal with this with the motions. I'm just trying to
11 understand this case, the big picture of this case.

12 Let me turn back to where we started with this motion.
13 Let me ask the Daily News and Tribune.

14 Let me first tell you that I give parties one
15 opportunity to file summary judgment. That's it. If you want
16 to have leave to file summary judgment, I will grant it to
17 you, but I will also tell you, as you know, pursuant to
18 Rule 56, that even if Mr. Trainor doesn't raise an issue, if
19 he merely shows that he needs discovery to support his theory
20 that there was fraud in the inducement, pursuant to the rule,
21 I should give him that opportunity to take discovery.

22 I am not passing on the validity of either parties'
23 arguments on the merits. I understand the Daily News and
24 Tribune are saying, listen, we have a release, it's ironclad,
25 we should be out of this case.

1 I understand Mr. Trainor is saying we think we have a
2 claim of fraud in the inducement so that we can knock out the
3 entire separation agreement.

4 All I'm asking the Daily News and Tribune at this
5 time is that if I grant you leave to file and I come to the
6 conclusion that Mr. Trainor should have an opportunity to get
7 discovery on his fraud in the inducement claim, I will not be
8 granting your motion for summary judgment.

9 I just want to make you aware before you file this
10 motion that could be an outcome in light of the defense
11 Mr. Trainor has raised in his papers.

12 MR. MULHERIN: Your Honor, just so I understand --
13 this is Joe Mulherin on behalf of the Tribune and Daily News.

14 Just so I understand, what would happen is, if we filed
15 a -- if we filed a motion and he justified the need for
16 discovery, you would automatically reject the motion as
17 opposed to letting discovery finish and then deciding the
18 motion?

19 THE COURT: Right, because I don't want you to
20 prematurely file a motion. That's why I only let you file
21 one.

22 There's a few ways -- I'm not giving away state
23 secrets. There's a few ways to attack a release; right?

24 You've laid all the factors out, but beyond the
25 factors, looking at a document you can make an argument saying

1 this is not within the scope of the release. I understand you
2 say this is any and all claims, it's very broad.

3 But another way to attack a contract is to say fraud
4 in the inducement, the contract is void, in this case the
5 agreement is void from the outset because it was fraud in the
6 inducement.

7 I am not saying that's ultimately what's going to
8 happen. I'm just saying that's what Mr. Trainor has raised in
9 his papers.

10 I don't want to tell you what to do, but I just want to
11 tell you what the consequences would be. If you file now and
12 I find that Mr. Trainor is entitled to discovery, I'm going to
13 deny your motion for summary judgment and I'm not going to let
14 you re-file a motion for summary judgment.

15 MR. MULHERIN: I understand, Your Honor. I think my
16 inclination at this point is we would take a narrow band of
17 discovery, then, and negate that argument and then re-file
18 this.

19 THE COURT: That I'm fine with because I understand
20 you believe -- putting aside the allegations and so forth, you
21 believe the release is dispositive.

22 What I can do, then, is I'm going to deny your leave --
23 request for leave without prejudice and when you have the
24 Rule 16 conference -- let me see who the magistrate is on
25 this.

1 The magistrate you have, Judge Dickson, is actually
2 going to be leaving the bench this month. It will be assigned
3 to a new magistrate.

4 I will tell the new magistrate that as far as the
5 Tribune and the Daily News are concerned I'm fine with focused
6 discovery solely as to the validity of the separation
7 agreement and the release contained therein so you can focus
8 your discovery on those issues. Okay?

9 MR. MULHERIN: That would be great. Thank you.

10 THE COURT: Mr. Trainor, is that acceptable to you?
11 You said fraud in the inducement. That is what you're
12 going to be arguing at least at this point; correct?

13 MR. TRAINOR: That's correct, Your Honor.

14 THE COURT: Okay. I think the other folks I know had
15 motions to dismiss. I administratively terminated those
16 pending the ruling on the filing of the first amended
17 complaint, at which point the other defendants will be free to
18 either just put their -- you can either just put a letter on
19 and say we stand by our original motions to dismiss, or you
20 can do entirely new motions to dismiss, or you can even do a
21 third option which is we stand by our original motions but we
22 want to do a supplement in light of the new allegations.

23 I will give leave to those defendants to address that
24 as they see fit. Of course you're free to answer, as well.
25 You don't have to do a motion to dismiss.

1 I'm not going to preclude you in that way. So that
2 would be for Mr. Exoo, Twitter, and Gadde, and I guess also --
3 well, and the new one we're going to have. We're also going
4 to have St. Lawrence University and then also the law firm
5 accused of malpractice during an arbitration.

6 As far as the Tribune and Daily News are concerned, so
7 the parties know going in, I'm going to allow you to focus
8 your discovery on this issue so we can get this resolved
9 sooner rather than later. Okay?

10 MR. MULHERIN: Understood. Thank you.

11 MR. TRAINOR: Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Trainor. You helped me
13 understand what the case is ultimately about.

14 On behalf of plaintiff, is there anything else,
15 Mr. Trainor? Or plaintiffs. I know you're --

16 MR. TRAINOR: Just one example of the type of
17 messages that Mr. Exoo directs at Mr. D'Ambly. This is -- he
18 says to Mr. D'Ambly: I'm going to spend the next week
19 wrecking your f'ing life, Dan D'Ambly.

20 That's the texture and tone of these messages that are
21 directed at D'Ambly and his ancillary employers, coworkers,
22 whoever else is involved in order to get him terminated.
23 That's the type of messages he sends, Mr. Exoo.

24 THE COURT: Mr. Trainor, you should be down at the
25 Capitol for the impeachment hearings because I understand

1 there's some very interesting arguments about what's protected
2 and what's not protected right now going on, so it's a timely
3 issue if nothing else. I appreciate that.

4 Let me he go through the Daily News and Tribune. Is
5 there anything else on behalf of the Daily News and Tribune?

6 MR. MULHERIN: No, Your Honor.

7 THE COURT: I don't want to preclude other counsel.
8 I know this really wasn't your issue.

9 As for counsel for Mr. Exoo, Twitter, Mr. Gadde, is
10 there anything else you'd like to address at this time?

11 MR. MARLBOROUGH: Your Honor, this is Chris
12 Marlborough. My question to the Court is will a transcript of
13 this call be orderable or --

14 THE COURT: Yes. Lisa Larsen is my court reporter,
15 and if you contact my Courtroom Deputy Ms. Olivieri, we'll get
16 you set up so you can order a transcript. Okay?

17 MR. MARLBOROUGH: Thank you, Your Honor.

18 MR. TRAINOR: Thank you, Your Honor.

19 THE COURT: Thank you, Counsel.

20 (Which were all the proceedings had in
21 the foregoing matter on said day.)

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FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE

I, **Lisa A. Larsen, RPR, RMR, CRR, FCRR**, Official Court Reporter of the United States District Court for the District of New Jersey, do hereby certify that the foregoing proceedings are a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I further certify that I am neither related to any of the parties by blood or marriage, nor do I have any interest in the outcome of the above matter.

/S/Lisa A. Larsen, RPR, RMR, CRR, FCRR

Official U.S. District Court Reporter ~

DATED this February 9, 2021